84-592

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1984

NORMAN WILLIAMS and SUSAN LEVINE,
Appellants,

v.

STATE OF VERMONT and WILLIAM H. CONWAY, JR., COMMISSIONER, VERMONT DEPARTMENT OF MOTOR VEHICLES,
Appellees.

ON APPEAL FROM THE SUPREME COURT
OF VERMONT

JURISDICTIONAL STATEMENT

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QUESTIONS PRESENTED

1. Does a state motor vehicle "use" tax, which facially discriminates on the basis of residency in granting tax credits, violate the Equal Protection or Privileges and Immunities Clause of the United States Constitution?

2. Does the Commerce Clause prohibit a state from imposing a "use" tax on property brought from another state without granting credit for sales tax paid to the state of origin?

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JURISDICTIONAL STATEMENT

Nature of Proceeding

Norman Williams and Susan Levine appeal from the final judgment of the Supreme Court of Vermont dated June 15, 1984, and denial of motion for reargument dated July 9, 1984. The Vermont Supreme Court held that the Vermont Motor Vehicle Purchase and Use Tax, Vt. Stat. Ann. tit. 32, §§8901-8911, is not unconstitutional as a violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, am. XIV, §1, cl. 4; the Privileges and Immunities Clause of the United States Constitution, Art. IV, §2, cl. 1; or the Commerce Clause of the United States Constitution, Art. I, §8, cl. 3. The Vermont Supreme Court's decision conflicts with the established decisions of this Court.

Opinions Below

The opinion of the Supreme Court of

Vermont, not yet reported, appears at p. 1a of the Appendix hereto. (The opinion upon which the Vermont Supreme Court relied, Leverson v. Conway, Docket No. 83-157 (Vt., June 15, 1984) appears as p. 19a of the Appendix hereto.)

The unreported order of the Vermont Supreme Court denying Appellants' motion for reargument appears at p. 3a of the Appendix hereto.

The unreported opinion of the trial court, the Superior Court of Vermont for Washington County, appears at p. 4a of the Appendix hereto.

Jurisdiction

The Supreme Court of Vermont on June 15, 1984, entered a final judgment affirming the trial court's order dismissing Appellants' complaint under Rule 12, V.R.Civ.P. Appendix at 1a. The Supreme Court of Vermont based its one-line decision in this case on a related and as

yet unreported decision, Leverson v. Conway, Docket No. 83-157 (Vt., June 15, 1984). A copy of that decision is attached. Appendix at 19a. Appellants' motion for reargument was denied on July 9, 1984. Appendix at 3a. Appellants filed a notice of appeal to this Court with the Supreme Court of Vermont on July 25, 1984. Appendix at 46a. This appeal is being docketed in this Court within 90 days from the entry of the order denying reargument of the Supreme Court of Vermont. The jurisdiction of this Court is invoked under 28 U.S.C. §1257(2).

Constitutional and Statutory Provisions Involved

Amendment XIV, §1, cl. 4, United States Constitution:

No State shall . . . deny to any person within its jurisdiction the equal protection of the laws.

Article IV, §2, cl. 1, United States Constitution:

The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

Article I, §8, cl. 3, United States Constitution:

The Congress shall have Power . . . To regulate Commerce . . . among the several States . . .

Vt. Stat. Ann. tit. 32, §§8901, 8902(2), 8903, 8905(b), 8907, 8909, 8911:

[The text of these statutes may be found at pages 136 through 146 of volume 9, Vt. Stat. Ann., and at pages 3-4 of the 1983 supplement thereto. A copy of the statutes is reprinted at pages 48a - 59a of the Appendix.]

STATEMENT OF THE CASE

On February 1, 1981, Appellant Norman Williams moved to Vermont, where he now lives. He brought with him a 1980 Volkswagen Dasher Diesel, purchased for $9,300

in Chicago Heights, Illinois, on December 10, 1980. At the time of the purchase, he paid a five percent Illinois sales tax, or $465.

Appellant Williams' Illinois registration expired on September 30, 1981. As a Vermont resident under Vt. Stat. Ann. tit. 23, §4(30), he was then required to register his motor vehicle in Vermont by Vt. Stat. Ann. tit. 23, §301.

Appellant Williams presented his completed Registration Tax and Title Application to the Vermont Department of Motor Vehicles on October 22, 1981. He was informed by a clerk for the Vermont Motor Vehicle Department that he would be required to pay a four percent tax on the value of his automobile, despite the fact that he had already paid a five percent sales tax in Illinois. Appellant Williams declined to pay the four percent tax on grounds that it was unconstitutional.

Absent payment, the Department of Motor Vehicles and Appellee William Conway, its Commissioner, refused vehicle registration.

On November 3, 1981, Appellant Williams brought an action in Vermont Federal District Court, seeking a declaratory judgment that Vt. Stat. Ann. tit. 32, §§8903, 8909, and 8911 were unconstitutional. On June 30, 1982, following this Court's decision in California v. Grace Brethren Church, 457 U.S. 393 (1982), that action was dismissed on jurisdictional grounds under the Tax Injunction Act, 28 U.S.C. §1341.

On August 27, 1982, Appellant Williams again presented a completed Registration Tax and Title Application to the Department of Motor Vehicles. Based on a "low book" value for the car of $4,300, the Department assessed and Appellant Williams paid under protest a

four percent tax of $172. After paying the tax, Williams requested a hearing before the Department of Motor Vehicles. In findings of fact and a decision dated October 26, 1982, the hearing officer ruled that the Department could not reach the constitutional questions raised and dismissed the appeal.

Accordingly, Appellant Williams on November 22, 1982, filed a complaint in the Vermont state trial court, the Superior Court for Washington County, Vermont, seeking a refund of the tax paid and a declaratory judgment that Vermont's purchase and use tax scheme for motor vehicles was unconstitutional. Williams claimed that the tax scheme violated his rights under the Equal Protection Clause, Privileges and Immunities Clause, and Commerce Clause of the U.S. Constitution and under the Proportional Contribution Clause of the Vermont Constitution. In

lieu of answering the complaint, Appellees on December 23, 1982, moved to dismiss under Rule 12, V.R.Civ.P.

On January 23, 1983, before any judgment in the case was rendered, Appellant Susan Levine moved to intervene in Williams v. Vermont as a party-plaintiff, and an amended complaint stating the claims of both Appellants was filed. Miss Levine had moved to South Burlington, Vermont, from Saranac Lake, New York, in November, 1979. She brought with her a 1979 Chrysler Horizon purchased on September 29, 1978, for $4,923.40 from Upstate Auto Service and Body Works, Inc., in Saranac Lake, New York. At the time of purchase, she had paid a seven percent New York sales tax, or $344.64.

On December 16, 1982, and before expiration of her New York registration, Miss Levine presented a completed Registration Tax and Title Application to the

Vermont Department of Motor Vehicles. Based on a "low book" value of $2,750, the Department of Motor Vehicles assessed, and Appellant Levine paid, a four percent "use" tax to Vermont of $110.

At a meeting in chambers and off-the-record on January 26, 1983, the Vermont Superior Court granted Appellant Levine's motion to intervene. The parties also agreed to waive oral argument and to rely on their briefs with respect to the motion to dismiss.

The Superior Court granted the Appellees' motion to dismiss on February 24, 1983. It held that, although the motor vehicle purchase and use tax did discriminate on the basis of residency, such discrimination was "rationally related" to the cost of maintaining state highways and therefore did not violate the Equal Protection Clause. It applied the same "rational basis" test in concluding

that the statutory scheme did not violate the Privileges and Immunities Clause. Finally, the Superior Court ruled that no "discrimination against interstate commerce" had been "demonstrated" and dismissed Appellants' claim under the Commerce Clause of the U.S. Constitution as well.[1]

Appellants Levine and Williams filed a notice of appeal to the Vermont Supreme Court on March 22, 1983. See Appendix at 46a. Appellants asserted the same four claims for relief before the Vermont Supreme Court: violation of the Equal Protection, Privileges and Immunities, and Commerce Clauses of the U.S. Constitution

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1. The lower court's use of the word "demonstrate" suggests a failure of proof on the part of Appellants. However, proof plainly was not appropriate in the context of a motion to dismiss under Rule 12, V.R.Civ.P.

and violation of the Proportional Contribution Clause of the Vermont Constitution. After submission of memoranda and oral argument, the Vermont Supreme Court rejected Appellants' claims and affirmed the lower court's dismissal. The Appellants moved for reargument on June 27, 1984, based in part on this Court's decision in Armco, Inc. v. Hardesty, 52 U.S.L.W. 4787 (June 12, 1984). That motion was denied without opinion by the Vermont Supreme Court on July 9, 1984. See Appendix 3a.

THE QUESTIONS PRESENTED ARE SUBSTANTIAL

This case presents substantial federal questions with respect to a state's right to impose discriminatory taxes on automobile operation based on residency and point of purchase. Briefly put, Vermont imposes a substantial

"purchase and use" tax[2] on individuals seeking to register their automobiles in Vermont. However, Vermont residents only are specifically granted a credit against that tax for automobile sales taxes paid other states.[3] Individuals who were not Vermont residents when they purchased

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2. Under Vt. Stat. Ann. tit. 32, §§8903(b) and 8905(2), the tax imposed is four percent of the purchase price of the automobile or $600, whichever is greater. However, the Vermont Department of Motor Vehicles routinely assesses the four percent tax only on the "low book" value of the car. Appellees' attorney has stated publicly that the challenged portion of the tax yields revenues to Vermont of at least $1 million. See Appendix, p. 61a.

3. Vt. Stat. Ann. tit. 32, §8911(9). Credit is granted to residents under the statute when "the state or province collecting such tax would grant the same pro-rata credit for Vermont tax paid under similar circumstances." Both of the relevant states in this case, New York and Illinois, do grant reciprocal credit. According to the Department of Motor Vehicles, 35 states grant such credit.

their automobiles are denied such a credit. The resultant resident--non-resident discrimination violates the Equal Protection and Privileges and Immunities Clauses of the U.S. Constitution. Further, Vermont's failure to grant a credit against its "purchase and use" tax for all sales taxes paid other states, regardless of whether residents or non-residents paid them, violates the Commerce Clause of the U.S. Constitution.

I. THE IMPOSITION OF A DISCRIMINATORY TAX BASED ON STATE RESIDENCY PRESENTS SUBSTANTIAL FEDERAL QUESTIONS.

A. Vermont's Motor Vehicle "Purchase and Use" Tax Conflicts With Established Decisions of This Court Under the Equal Protection Clause.

The first question presented by this case is whether Vermont's motor vehicle tax scheme violates the Equal Protection or Privileges and Immunities Clause of the U.S. Constitution. As interpreted by this Court, the Equal Protection Clause forbids

any tax which discriminates between new and long-term residents or interferes with an individual's "right to travel,"[4] unless that tax serves a "compelling" state interest. Vermont's motor vehicle tax discriminates by granting a tax credit only to those persons who were Vermont residents when they purchased their automobiles in other states. Because it "operates to penalize those persons, and only those persons, who have exercised their constitutional right to interstate migration," it interferes with Appellants'

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4. This Court suggested in Zobel v. Williams, 457 U.S. 55 (1982) that the "right to travel" may be better thought of as a particular application of the equal protection analysis. Id., n. 6 at 50 (main opinion). Other members of the Court believed that the "right to travel" remained distinct. See id., at 71 (O'Connor, Jr., concurring). Under either view, Vermont's motor vehicle tax fails to pass constitutional muster.

"right to travel." Oregon v. Mitchell, 400 U.S. 112 at 238 (1970) (separate opinion of Brennan, White and Marshall, JJ.). Defendants have not suggested any "compelling" state interest to justify such discrimination and interference.

The Vermont Supreme Court in Leverson v. Conway, Docket No. 83-157 (June 15, 1984) (upon which it relied in affirming the dismissal of this case), held that the fundamental "right to travel" was not violated nor even implicated by the Vermont motor vehicle tax. Appendix, p. 29a. It said:

> "He [the appellant] was free to bring his property, including his station wagon, to Vermont without incurring any penalty as a result."

Appendix 29a. The Vermont Supreme Court based this holding on the fact that no tax was actually due until the Appellant "sought the privilege of operating that vehicle on Vermont's highways." Id.

With this transparent sleight-of-hand, the Vermont Supreme Court sought to avoid entirely the Equal Protection Clause. Despite the Court's reasoning, however, the fact remains that Vermont does impose a substantial penalty on individuals immigrating to Vermont which it does not impose on individuals already there. The fact that the tax is imposed on the immigrant when he seeks to operate his automobile, rather than when he transports it into the state, is irrelevant to the Equal Protection analysis. It is the discrimination itself and not its timing that offends the Equal Protection Clause. As this Court said in Zobel v. Williams, the Clause "protects new residents of a state from being disadvantaged because of their recent migration or from otherwise being treated differently from longer term residents." 457 U.S. 55 at

60, n. 6. See also Memorial Hospital v. Maricopa County, 415 U.S. 250, 263 (1974).

B. Vermont's Motor and Vehicle "Purchase and Use" Tax Cannot Be Squared With This Court's Decisions Under The Privileges and Immunities Clause.

The Privileges and Immunities Clause,[5] while related to the Equal Protection Clause, demands a separate and distinct analysis. The court must first look to whether the individual right affected bears "upon the vitality of the Nation as a single entity," Baldwin v. Montana Fish and Game Commission, 436 U.S. 371, 383, or is required for a "norm of comity," Austin v. New Hampshire, 420 U.S. 656, 660 (1975). If so, the challenged

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5. Differences, if any, in the effect of the two Privileges and Immunities clauses in the United States Constitution, one in Article IV, §2, and the other in Section 1 of the Fourteenth Amendment, have not been settled. Baldwin v. Montana Fish and Game Commission, 436 U.S. 371, 380 (1978).

statute may not stand unless the non-residents "constitute a peculiar source of the evil at which the statute is aimed" and there is a "substantial relationship between that evil and the statutory discrimination against non-residents." Hicklin v. Orbeck, 437 U.S. 518, 525-527 (1978).

Under Baldwin, any interference with an individual's "right to travel" does "bear upon the vitality of the Nation as a whole." Moreover, Vermont's motor vehicle tax also burdens Appellants' right to equal taxation and to pursuit of a livelihood, both of which have been protected by this Court under the Privileges and Immunities Clause. See, e.g., Austin, 420 U.S. at 662, 663; Toomer v. Witsell, 334 U.S. 385 (1948).

Vermont's motor vehicle tax cannot be saved under Hicklin on grounds that non-residents constitute a "peculiar

source" of the evil at which the tax statute is aimed. Assuming the tax is aimed at maintaining Vermont's highway system, Appellees in this case have not and could not argue that the use of Vermont highways by non-residents who move to the state is a unique or even very significant cause of road deterioration. Use of roads by trucks, recreational vehicles, and resident cars surely causes far more wear and tear than use by non-residents who take up residence in Vermont. As is made clear in Hicklin, the fact that non-residents may be one of many sources of the problem does not justify discriminatory treatment against them. 437 U.S. at 526, 527.

The Vermont Supreme Court also held that the Vermont motor vehicle tax does not infringe Appellants' rights under the Privileges and Immunities Clause, since (in the Vermont Supreme Court's view) no

"fundamental rights" are infringed. Appendix, p. (10, 11). This analysis is plainly wrong under Austin and Baldwin. Those cases direct the court's attention to "norms of comity" or "rights which bear upon the vitality of the Nation as a single entity," not "fundamental rights." Certainly, this Court has struck down many statutes under the Privileges and Immunities Clause which do not involve fundamental rights in the equal protection clause sense. See e.g., Ward v. Maryland, 12 Wall. (U.S.) 418 (1817) (statute charging non-residents $300 annually to trade in goods not manufactured in Maryland while residents paid maximum of $150); Toomer (non-resident commercial shrimp fishermen charged higher fee than residents). This Court should consider Appellants' claim under the proper Privileges and Immunities Clause analysis.

II. VERMONT'S FAILURE TO GRANT A TAX CREDIT TO ALL INDIVIDUALS FOR SALES TAXES PAID OTHER STATES RAISES A SUBSTANTIAL FEDERAL QUESTION UNDER THE COMMERCE CLAUSE.

Appellants also claim that Vermont's motor vehicle tax offends the Commerce Clause of the U.S. Constitution in failing to grant a credit to all persons (not just Vermont residents) for sales tax paid to other states. By failing to grant such a credit, the tax provides an illegal incentive for persons planning to move to Vermont to wait and purchase their car in Vermont.

A. This Court Has Expressly Reserved the Commerce Clause Issue Twice; Individual Justices Have Expressed Opposing Views; the Lower Courts Are Split; and Commentators Disagree.

This Court has never decided whether the Commerce Clause requires a state to credit, against its own use tax, a sales tax paid another state. The Court has, in fact, reserved decision on that point twice. Southern Pacific Co. v. Gallagher,

306 U.S. 167, 172 (1939); Henneford v. Silas Mason Co., 300 U.S. 577, 587 (1937). At least one commentator and one legal reference work have remarked this omission. See L. Tribe, American Constitutional Law (1978) §6-16, at 359 n.24; 68 Am.Jur.2d Sales and Use Taxes §191, at 257.

Individual Justices have expressed contradictory views on the issue. Justice Brennan suggested a view consonant with that of the Vermont Supreme Court in his concurring opinion in Halliburton Oil Well Co. v. Reilly, 373 U.S. 64, 76-77 (1963). In International Harvester Co. v. Department of Treasury, 322 U.S. 340, 349-62 (1944) (Rutledge, J., concurring and dissenting in McLeod v. J. E. Dilworth Co., 322 U.S. 327 (1944)), Justice Rutledge, although reserving decision on the instant point, 322 U.S. at 362, expressed the view that cumulative

taxation of an interstate sale by the state of origin and the state of use would be an unconstitutional burden on interstate commerce. 322 U.S. at 359-60.

The lower courts are split. Cf. Montgomery Ward & Co. v. State Board of Equalization, 272 Cal. App.2d 728, 78 Cal. Rptr. 373, 394 (1969) cert. denied, 396 U.S. 1040 (1970) (invalidating provision of California use tax that failed to extend credit for sales tax paid other states) with J. C. Penney & Co., Inc. v. Hardesty, 264 S.E.2d 604 (W.Va. 1980) (holding that consumers lack standing to invoke the Commerce Clause to challenge use tax which failed to extend credit for sales tax paid other states).

Commentators likewise disagree. Most have adopted views inconsistent with that of the court below. See Comment, Compensating Use Taxes, 18 Ark. L. Rev. 321, 338-39 (1964-65) (suggesting that an

offsetting credit is a "proper mechanism to keep interstate trade unfettered by provincialisms manifested in taxing statutes," id. at 339); Note, Economic Neutrality and the Compensatory Use Tax, 16 Stan. L. Rev. 1016, 1028 (1964) ("a credit provision in some form is more consistent with the desire of the drafters of the commerce clause to destroy state economic boundaries than is the suggestion in Henneford that each state be viewed as a self-contained unit") (footnote omitted); Note, Developments in the Law -- Federal Limitations on State Taxation of Interstate Business, 75 Harv. L. Rev. 953, 999 (1962) (use tax appears invalid on the ground of double taxation where the buyer takes delivery in a sales tax state other than the one in which the goods will be used); M. Cruz, The Use Tax: Its History, Administration, and Economic Effects (1941) (same); but cf. T. Powell, New

Light on Gross Receipts Taxes, 53 Harv. L. Rev. 909, 930-31 (1940).

B. The Decision of the Court Below Conflicts with Boston Stock Exchange v. State Tax Commission, 429 U.S. 318 (1977).

In Leverson v. Conway, Docket No. 83-157 (June 15, 1984), (the decision on which the Vermont Supreme Court relied in affirming dismissal in the instant case), the court reasoned that because the appellant there and his car were no longer "in transit" but "had come to rest," Appendix, p. 44a, commerce was at an end and the use tax imposed on appellant's car did not implicate the Commerce Clause. Without facing the question of whether a use tax that fails to extend credit for sales tax paid another state discriminates against interstate commerce, the court below stated that property at rest is "clearly an appropriate subject for the imposition of a non-discriminatory use tax." Appendix, p. 44a.

Property which is "at rest," rather than "in transit," certainly may be the subject of a non-discriminatory state tax. Michelin Tire Corp. v. Wages, 423 U.S. 276, 290 & n. 11 (1976). But merely labelling the property "at rest" does not excuse a tax which discriminates against interstate commerce. In Boston Stock Exchange v. State Tax Commission, 429 U.S. 318, 332 n. 12 (1977), this Court rejected the notion that a tax should be sustained "because it is imposed on a local event at the end of interstate commerce." The question, the Court held, is not whether commerce is at an end, but whether the tax discriminates "on the basis of some interstate element." Id. See generally, Dayton Power & Light Co. v. Lindley, 58 Ohio St.2d 465, 475, 391 N.E.2d 716, 721-22 (1979).

This Court has made it abundantly clear that the test of the validity of a

state tax under the Commerce Clause is whether, in practical effect, the tax discriminates against interstate commerce. Maryland v. Louisiana, 451 U.S. 725, 756 (1981). Moreover, only three days before the court below issued its decision, this Court held that, in evaluating the effect on interstate commerce of a state tax, the proper analysis is to evaluate the "internal consistency" of the tax: "'that is the [tax] must be such that, if applied by every jurisdiction' there would be not impermissible interference with free trade." Armco Inc. v. Hardesty, 52 U.S.L.W. 4787, 4789 (U.S. June 12, 1984) (No. 83-297) (quoting from Container Corp. of America v. Franchise Tax Board, 103 S.Ct. 2933, 2942 (1983)).[6]

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6. The Vermont Supreme Court specifically rejected Appellants' motion
(Footnote Continued)

A "compensating" use tax that affords no credit for sales tax paid another state is not "internally consistent." If every state in the Union adopted a tax like Vermont's motor vehicle tax, every individual in Appellants' position would be subject to multiple taxation and would face an incentive to buy in the state of destination. Such a tax "overcompensates"; it increases rather than reduces barriers to neutral economic decision making. By contrast, a true compensating use tax, one which affords credit for sales tax paid to the state of origin, eliminates tax considerations in consumer purchases and emphasizes legitimate commercial concerns, including price,

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(Footnote Continued)
for reargument based on Armco. Apparently, consideration of that case would not modify the lower court's opinion.

quality, and time and place of delivery based on the buyer's need.

CONCLUSION

The Vermont Motor Vehicle Purchase and Use Tax is constitutionally flawed in two respects. First, the statute requires new residents to pay a substantial tax before they may operate their own cars, while older residents in identical circumstances are granted a tax credit. Such discrimination is forbidden by the Equal Protection and Privileges and Immunities Clauses of the U.S. Constitution. Nor can it be sanctioned merely because the tax is imposed as a condition of operating the vehicle, rather than bringing it into the state, as the Vermont Supreme Court believes.

Vermont's motor vehicle tax also discriminates against interstate commerce in failing to grant a credit against the use tax for sales tax paid to another

state. The time has come for this Court to mark a limit to a state's taxing power by declaring that a taxpayer paying in a state of origin cannot be compelled to pay again in the state of destination. Accordingly, this Court should note probable jurisdiction.

Dated: Burlington, Vermont
October 8, 1984

Respectfully submitted,

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[PA1312]

APPENDIX

VERMONT SUPREME COURT

ENTRY ORDER

SUPREME COURT DOCKET NO. 83-139

June Term, 1984

NORMAN WILLIAMS, Esq., and SUSAN LEVINE	)	APPEALED FROM: Washington Superior Court
v.	)	Docket No. S-436-82Wnc
STATE OF VERMONT; WILLIAM H. CONWAY, JR., COMMISSIONER OF MOTOR VEHICLES	)	

Filed June 15, 1984

In the above entitled cause the Clerk will enter:

This case being controlled by our decision in Leverson v. Conway, ___ Vt.

___, ___ A.2d ___, filed this same date, the judgment below is affirmed.

BY THE COURT:

/s/ Franklin S. Billings, Jr.
Chief Justice

/s/ William C. Hill

/s/ Wynn Underwood

/s/ Louis P. Peck

/s/ Ernest W. Gibson III
Associate Justices

VERMONT SUPREME COURT

ENTRY ORDER

SUPREME COURT DOCKET NO. 83-139

June Term, 1984

NORMAN WILLIAMS, Esq., and SUSAN LEVINE	)	APPEALED FROM: Washington Superior Court
v.	)	Docket No. S-436-82Wnc
STATE OF VERMONT; WILLIAM H. CONWAY, JR., COMMISSIONER OF MOTOR VEHICLES	)	

Filed July 9, 1984

In the above entitled cause the Clerk will enter:

Plaintiffs' motion for reargument is denied.

BY THE COURT:

/s/ Franklin S. Billings, Jr.
Chief Justice

/s/ William C. Hill

/s/ Wynn Underwood

/s/ Louis P. Peck

/s/ Ernest W. Gibson III
Associate Justices

STATE OF VERMONT

WASHINGTON COUNTY, SS.

NORMAN WILLIAMS and SUSAN LEVINE	)	
	)	WASHINGTON
v.	)	SUPERIOR COURT
	)	
STATE OF VERMONT and WILLIAM H. CONWAY, JR.	)	DOCKET NO. S436-82WnC

OPINION AND ORDER

The above-entitled cause came before the Washington Superior Court on the Motion to Dismiss filed by Defendants. Plaintiffs seek a declaratory judgment that 32 V.S.A. §8903 and §8911 are unconstitutional and refund of the use tax they have paid.

Plaintiffs purchased their motor vehicles out-of-state prior to the time they became residents of Vermont and paid sales tax to the states where the purchases were made, Williams in Illinois and Levine in New York. Both Plaintiffs

subsequently moved to Vermont and paid, under protest, a Vermont use tax on the present fair market value of their vehicles. In this action, they maintain that the imposition of a use tax without an offsetting credit for the sales tax they paid to another state violates the Privileges and Immunities, the Equal Protection and the Commerce Clauses of the United States Constitution, and the Proportional Contribution Clause of the Vermont Constitution.

32 V.S.A. §8903 imposes a sales tax of 4% of the taxable costs of the vehicle of $600, whichever is less, upon all motor vehicles purchased by residents of Vermont. Subsection (b) of that provision imposes a corollary use tax of the same amount which is triggered by the registration or transfer of registration of a vehicle. A use tax need not be paid if a Vermont sales tax has been paid. In

addition, 32 V.S.A. §8911 provides a further exception to the use tax for:

> (9) pleasure cars acquired outside the state by a resident of Vermont on which a state sales tax or use tax has been paid by the person applying for a registration in Vermont, providing that the state or province collecting such tax would grant the same pro-rata credit for Vermont tax paid under similar circumstances. If the tax paid in another state is less than the Vermont tax the tax due shall be the difference.

A similar provision which applied to pleasure cars acquired outside the state by nonresidents was repealed in 1979.

Under this statutory scheme, a Vermont resident who purchases a motor vehicle out-of-state is credited for sales tax paid in the state of purchase when the Vermont use tax is imposed. A nonresident who purchases a car out-of-state and subsequently registers his car in Vermont is not granted such a credit. This distinction, Plaintiffs maintain, violates their constitutional rights.

All states which impose a sales tax also impose a complementing use tax on tangible property acquired outside of the state. This measure is intended to protect sales tax revenues by placing in-state retailers on a competitive parity with out-of-state retailers exempt from the local sales tax. National Geographic v. California Equalization Board, 430 U.S. 551, 555 (1977). The power of the states to establish a nondiscriminatory tax on the use of goods brought from another state has been firmly established. Henneford v. Silas Mason Co., 300 U.S. 577 (1938).

The Washington use tax statute construed by the Court in Henneford provided an offsetting credit available to residents and nonresidents alike if any tax had been paid to another state by reason of use or purchase there. Id. at 584. The Court cautioned, however, that

> [we] have not meant to imply by anything said in this opinion that allowance of a credit for other taxes paid to Washington made it mandatory that there should be a like allowance for taxes paid to other states. A state, for many purposes, is to be reckoned as a self-contained unit, which may frame its own system of burdens and exemptions without heeding systems elsewhere. If there are limits to that power, there is no need to mark them now. It will be time enough to mark them when a taxpayer paying in the state of origin is compelled to pay again in the state of destination.

Id. at 587. And, in a later decision, the Supreme Court declined to rule on the constitutional necessity of an offset in the absence of evidence that the taxpayer had paid a sales tax in the state of origin. Southern Pacific Co. v. Gallagher, 305 U.S. 167 (1939).

The practice of granting a credit for sales tax has been adopted by a majority of the states which impose a use tax on out-of-state purchases. 68 Am.Jur.2d Sales and Use Taxes §220. Vermont, like most, provides for such a credit for

purchases by residents. The sole issue before the Court, therefore, is whether the legislature's failure to provide a similar credit for nonresidents constitutes discrimination of constitutional dimensions.

The mandate of Halliburton Oil Well Cementing Co. v. Reilly, 373 U.S. 64, 70 (1963), is that "equal treatment for in-state and out-of-state taxpayers similarly situated is a condition precedent for a valid use tax on goods imported from out-of-state." Equality of treatment refers to what happens within the taxing state, and not to the entire tax burden imposed on a particular taxpayer.

If a difference in treatment exists, the Court must impose "only the minimum scrutiny of the so-called 'rational basis test'." Hadwen, Inc. v. Dept. of Taxes, 139 Vt. 37, 42, 422 A.2d 255 (1980).

Classification is unconstitutional only when similar people are treated differently for wholly arbitrary and capricious reasons. Id. Where the classification rests on "some reasonable consideration of legislative policy, it is not unconstitutional." Andrews v. Lathrop, 132 Vt. 256, 259, 315 A.2d 860 (1974).

> [The] equal protection [clause] does not require identity of treatment with respect to classification for tax purposes, but only that the classification or distinction rest on a real, unfeigned difference; have some relevance to the legislative purpose; and lead to a difference in treatment which is not so disparate as to be wholly arbitrary.

Vermont Motor Inns, Inc. v. Town of Hartford, 134 Vt. 52, 55, 350 A.2d 369 (1975).

We are persuaded that 32 V.S.A. §8911 does not afford, on its face, equal treatment to residents and nonresidents who purchase cars out-of-state. We

conclude, however, that this disparity is supported by a rational purpose and is reasonably structured to advance a legitimate legislative goal.

We take as a logical starting point the premise that Vermont has the right to impose a sales or use tax on all motor vehicles purchased or used within the state. In fact, however, neither Vermont, New York or Illinois imposes a sales tax on vehicles sold to nonresidents. To that extent, the reciprocal credit provision of 32 V.S.A. §8911 is inapplicable, since a Vermont resident buying a car in New York or Illinois would not have paid a sales tax, and would thus be liable for the entire amount of use tax in Vermont.

Vermont taxes only sales made to Vermont residents, whether in the guise of a sales tax (if purchased in-state) or a use tax (if purchased out-of-state). Whatever the tax is called, it is imposed

only once - by the state of consumption. When a motor vehicle is used in more than one state, however, it is reasonable to subject it to a use tax in each state. Were it otherwise, a Vermont use tax might be avoided altogether "by the simple expedient of buying and using the property outside the [state] for a period sufficiently long to avoid the imposition of such a tax." Atlantic Gulf & Pac. Co. v. Gerosa, 16 N.Y.2d 1, 209 N.E.2d 86, 89 (1965). It is important to note, moreover, that the use tax imposed upon Plaintiffs is not upon the original price of the motor vehicles, but only on their value at the time they were brought into the state.

While the overall tax burden on the Plaintiffs may be greater than on a state resident who does not move, we are persuaded that this difference is supported by their use of the highways of

more than one state. In any event, the test for an equal protection claim is whether discrimination occurs within the state, and we find that it does not. The state exacts a use tax upon the value of all cars used within the state, regardless of whether they were purchased by residents or nonresidents, and Plaintiffs have failed to demonstrate that they would have been treated any differently had they been Vermont residents when they purchased their cars.

Plaintiffs have also failed to show any infringement of their right to travel freely between states. They, like Vermont residents, have merely been compelled to pay for the privilege of using Vermont highways.

The test of whether a statute infringes on the right of free interstate travel is whether it "has no other purpose than to chill the assertion of

constitutional rights by penalizing those who choose to exercise them." Place v. Place, 129 Vt. 326, 328, 278 A.2d 710 (1971), citing Shapiro v. Thompson, 394 U.S. 618 (1969). Clearly, not every differential between states can be said to violate the fundamental right to travel.

Unlike Shapiro, the regulation in question does not inflict a severe penalty or have "dire effects". See Starns v. Malkerson, 401 U.S. 985 (1971), aff'g without opinion 326 F.Supp. 234 (D. Minn. 1970). As one commentator has stated, "[right to travel] cases may . . . be understood more readily as revolving about the issues of welfare and poverty and not truly about the fundamental right to travel." L.Tribe, American Constitutional Law 1005. We are persuaded that the denial of welfare benefits or emergency medical relief for a year, or an extended residency requirement in order to vote,

offer a very different kind of impediment to travel between states than does the very minimal monetary outlay compelled by 32 V.S.A. §8903. The imposition of a use tax on vehicles purchased out-of-state does not impede the right to travel, even in the absence of a credit for previously paid sales tax.

Nor is the Court persuaded that Vermont's use tax violates the Privileges and Immunities Clause of the United States Constitution. 68 Am.Jur. 2d Sales and Use Taxes §197; State v. Fields, 27 Ohio L.Abs, 662, 35 N.E.2d (1938). To support a claim that a taxing statute abridges constitutional privileges and immunities, Plaintiffs must demonstrate that they are treated differently from state citizens without a reasonable basis. Wheeler v. State, 127 Vt. 361, 366, 249 A.2d 887 (1969), citing Travis V. Yale & Towne Mfg. Co., 252 U.S. 60, 79. Since we have

concluded that the difference in treatment afforded residents and nonresidents, if any, has a reasonable basis, we conclude that Plaintiffs have failed to demonstrate that the statutes in question violate the Privileges and Immunities Clause of the constitution.

With respect to Plaintiffs' claim regarding a violation of the Commerce Clause, we conclude that no discrimination against interstate commerce has been demonstrated. The Vermont use tax statues do not discourage purchases from out-of-state retailers, or benefit in-state retailers at another state's expense. At most, assuming that the nonresident knew at the time of purchase that he intended to establish residency in Vermont, the statutes would furnish an incentive to move prior to the acquisition of an out-of-state motor vehicle.

The Proportional Contribution Clause of the Vermont Constitution has been construed by the Court as the practical equivalent of the Equal Protection Clause of the federal constitution. Pabst v. Commissioner of Taxes, 136 Vt. 126, 388 A.2d 1181 (1978). For the same reasons the Court found no infringement of the Fourteenth Amendment, therefore, we conclude that Plaintiffs have failed to demonstrate that the Proportional Contribution Clause has been violated.

In view of the foregoing, it is hereby ORDERED AND ADJUDGED:

The Motion to Dismiss filed by the Defendants is GRANTED.

Dated at Montpelier, Vermont this

24th day of February, 1983.

/s/ James L. Morse
James L. Morse
Superior Judge

/s/ Willis C. Bragg
Willis C. Bragg

/s/ Patricia B. Jensen
Patricia B. Jensen

No. 83-157

LEONARD G. LEVERSON	)	SUPREME COURT
	)	
	)	ON APPEAL FROM
v.	)	DISTRICT COURT
	)	OF VERMONT,
WILLIAM H. CONWAY, VERMONT DEPARTMENT OF MOTOR VEHICLES	)	UNIT NO. 1, RUTLAND CIRCUIT

November Term, 1983

Francis B. McCaffrey, J.

Leonard G. Leverson, pro se, Pittsford, plaintiff-appellant

John J. Easton, Jr., Attorney General, and Andrew M. Eschen, Assistant Attorney General, Montpelier, for defendant-appellee

PRESENT: Billings, C.J., Hill, Underwood, Peck and Gibson, JJ.

GIBSON, J. On May 29, 1982, while residing in Wisconsin, plaintiff purchased a 1979 Subaru station wagon for the sum of $4325. He paid a five percent sales tax of $216.25 to the state of Wisconsin. In July 1982 plaintiff moved to Vermont. Upon registering his vehicle in Vermont in August 1982, plaintiff was required to pay a use tax of $112 as a condition of

registration. The use tax, computed at the rate of four percent on a low book value of $2800 as of the date of registration was paid by plaintiff under protest. Subsequently, plaintiff brought suit to recover the $112. The matter was submitted to the small claims court on an agreed statement of facts. Upon the entry of judgment for defendant, plaintiff appealed, presenting the following issues for our consideration.

> (1) Whether the Vermont motor vehicle purchase and use tax (32 V.S.A. §8901 et seq.) violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution by its failure to afford to a new resident credit for the sales tax paid on an automobile purchased, used, and registered in a former state of residence;
>
> (2) Whether the Vermont motor vehicle purchase and use tax violates the Proportional Contribution Clause (Ch. I, Art. 9) of the Vermont Constitution by its failure to afford to a new resident credit for the sales tax paid on an automobile purchased, used, and registered in a former state of residence;

> (3) Whether the Vermont motor vehicle purchase and use tax violates the Privileges and Immunities Clause of Article IV, §2, cl. 1 of the United States Constitution by its failure to afford to a new resident credit for the sales tax paid on an automobile purchased, used, and registered in a former state of residence; and
>
> (4) Whether the Vermont motor vehicle purchase and use tax violates the Commerce Clause (Art. I, § 8, cl. 3) of the United States Constitution by its failure to afford to a new resident credit for the sales tax paid on an automobile purchased, used, and registered in a former state of residence.

32 V.S.A. §8903 imposes a tax of four percent, or $600, whichever is smaller, upon the purchase and use of motor vehicles within the State of Vermont. The tax is payable by residents of the state at the time of purchase, id. §8903(a), or, if the vehicle is purchased out-of-state, at the time the vehicle is first registered for use within the state. Id. §8903(b).

Residents who purchase pleasure cars outside the state and pay a sales or use

tax to another state are exempt from paying a use tax to the State of Vermont, at least to the extent of the tax paid the other state, providing the state of purchase has a reciprocal agreement with Vermont that grants a similar credit for Vermont tax paid under similar circumstances. Id. §8911(9).

Until recently, a nonresident who purchased, registered and used his pleasure car in another state for at least thirty days was also granted an exemption; however, that exemption was repealed effective September 1, 1980. 1979 No. 202 (Adj. Sess.), §3, Pt. VI, eff. Sept. 1, 1980 (repealing 32 V.S.A. §8911(6)). As a result of the repeal, a nonresident who moves to Vermont and desires to register his motor vehicle here must pay the State of Vermont a use tax of four percent of the fair market value of his vehicle as of the time of registration. Although

Wisconsin is a state that has a reciprocal agreement with the State of Vermont, the plaintiff, as a person who purchased his vehicle while a resident of Wisconsin and registered and used it in that state for more than thirty days, is not entitled to an exemption in light of the 1980 repeal.

The purpose of the motor vehicle purchase and use tax is to pay for improvement and maintenance of the state and interstate highway systems. 32 V.S.A. §8901. The use tax, an important complement to the sale [sic] tax, is designed "to protect a state's revenues by taking away the advantages to residents of traveling out of state to make untaxed purchases, and to protect local merchants from out-of-state competition which, because of its lower or nonexistent tax burdens, can offer lower prices." Rowe-Genereux, Inc. v. Department of Taxes, 138 Vt. 130, 133-34, 411 A.2d 1345,

1347 (1980). The power of a state to establish a nondiscriminatory tax on the user of goods brought from another state has long been firmly established. Henneford v. Silas Mason Co., 300 U.S. 577 (1937).

Sales and use taxes are different in concept, and they are assessed upon different transactions.

> A sales tax is a tax upon the freedom to purchase . . . . A use tax is on the enjoyment of that which was purchased . . . . Though sales and use taxes may secure the same revenues and serve the same complementary purposes, they are . . . . taxes on different transactions and for different opportunities afforded by a State.

McLeod v. Dilworth, 322 U.S. 327, 330-31 (1944). Because the taxes are intended to complement one another, a person who has paid a tax upon the purchase of a motor vehicle in Vermont is not subject to the payment of a use tax to the state. 32 V.S.A. §8903(b).

We first consider whether Vermont's motor vehicle purchase and use tax violates the Equal Protection Clause. Plaintiff claims that the use tax adversely affects his right to travel and that any infringement of this fundamental right must be viewed with "strict scrutiny" by the courts. The right to travel has been recognized by the United States Supreme Court as a right that "protects new residents of a state from being disadvantaged because of their recent migration or from otherwise being treated differently from longer term residents." Zobel v. Williams, 457 U.S. 55, 60 n.6 (1982) (citing Memorial Hospital v. Maricopa County, 415 U.S. 250 (1974)). See also Memorial Hospital v. Maricopa County, supra, (one-year county residency requirement for nonemergency medical benefits struck down as penalizing exercise of right to travel without the

showing of a sufficient state interest in justification); Dunn v. Blumstein, 405 U.S. 330 (1972) (one-year residency requirement to vote in state election rejected on ground that no compelling state interest was shown to justify the penalty imposed as a result of the exercise of the right to travel); Shapiro v. Thompson, 394 U.S. 618 (1969) (one-year residency requirement to qualify for welfare benefits struck down on ground that no compelling governmental interest had been shown in justification of the state action penalizing the exercise of the right to travel).

The "strict scrutiny" test is invoked upon a showing of some penalty resulting from the exercise of a fundamental right, such as the right to travel; there is no requirement of a showing that a person was deterred from traveling, only that there was a penalty for doing so. Dunn v.

Blumstein, supra, 405 U.S. at 340. Under the strict scrutiny test, "any classification which serves to penalize the exercise of . . . . [a fundamental] right, unless shown to be necessary to promote a compelling governmental interest, is unconstitutional." Shapiro v. Thompson, supra, 394 U.S. at 634 (emphasis in original).

Ordinarily, when this Court is called upon to determine whether a tax law violates the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution, the Court is required to impose "only the minimum scrutiny of the so-called 'rational basis test'." Hadwen, Inc. v. Department of Taxes, 139 Vt. 37, 42, 422 A.2d 255, 258 (1980). See Allied Stores of Ohio, Inc. v. Bowers, 358 U.S. 522, 527 (1959). "This test . . . permits a determination of unconstitutionality only where the relevant law

classifies similar persons for different treatment upon wholly arbitrary and capricious grounds . . . . Where the classification rests upon 'some reasonable consideration of legislative policy,' it will not be found unconstitutional." Hadwen, Inc. v. Department of Taxes, supra, 139 Vt. at 42, 422 A.2d at 258-59 (citing Andrews v. Lathrop, 132 Vt. 256, 259, 315 A.2d 860, 862 (1974)); Allied Stores of Ohio, Inc. v. Bowers, supra, 358 U.S. at 527.

Plaintiff complains that the court below erroneously used the "rational basis" test, applying an insufficient standard to his complaint, and that had the "strict scrutiny" test been applied, the use tax, which plaintiff paid under protest, would have been declared an unconstitutional infringement of plaintiff's right to travel under the Equal Protection Clause, entitling

plaintiff to recover the $112 he paid to the state.

Plaintiff misconceives the nature of the right he seeks to invoke. His right to travel has not been infringed. He suffered no restrictions on his right to travel to Vermont and incurred no penalty as a result of the exercise of this right. He was free to bring his property, including his station wagon, to Vermont without incurring any penalty as a result. He was free to move about the state in public or private conveyance (other than the station wagon) without restriction or penalty, and he was free to obtain a Vermont driver's license without having to pay any use tax on his vehicle. Only when plaintiff sought the privilege of operating that vehicle on Vermont's highways was he required to register it; registration, not the move to Vermont, triggered the use tax obligation. Had

plaintiff not sought to register the vehicle, he would have been under no obligation to pay a use tax on it.

In Wells v. Malloy, 402 F. Supp. 856 (D. Vt. 1975), affirmed without opinion 538 F.2d 317 (2d Cir. 1976), the plaintiffs challenged the constitutionality of the statute providing for suspension of their right to drive following nonpayment of the automobile purchase and use tax. Rejecting plaintiffs' claim, the court held, "[a]lthough a driver's license is an important property right in this age of the automobile, it does not follow that the right to drive is fundamental in the constitutional sense." Id. at 858. Accord Montgomery v. North Carolina Dept. of Motor Vehicles, 455 F. Supp. 338, 342 (W.D.N.C. 1978) (revocation of driver's license for refusal to submit to chemical

tests does not deprive licensee of any fundamental constitutional right).

As was stated in Wells v. Malloy, supra, 402 F. Supp. at 859,

> 'Vermont may no longer be thought of as having only dirt roads and an inadequate transportation and highway system.' (quoting Miller v. Malloy, 343 F. Supp. 46, 50 (D. Vt. 1972)). It is certainly possible to get from place to place using public transportation or by taking advantage of friends of family members.

In analyzing the argument that suspension of the right to drive is "beyond the pale of fair and just collection techniques" and that the State should be limited to refusing to register a motor vehicle when the purchase and use tax is not paid, the court stated,

> The issue is really whether it is easier to find someone to drive one's own car if one cannot drive, or to obtain a registered automobile for one's own use if one can drive but has no other car. Seen in this light, we cannot conclude that suspension of driving privileges is any more harsh or coercive than refusal to register a motor vehicle . . . .

Id. at 862. We agree and conclude that the plaintiff's right to register his motor vehicle does not rise to the level of a fundamental constitutional right, nor does it implicate the fundamental right to travel. Since no fundamental right is involved, the applicable standard for measuring the constitutionality of Vermont's statute is the "rational basis" test.

As stated earlier, under the "rational basis" test we may find a statute unconstitutional "only where the relevant law classifies similar persons for different treatment upon wholly arbitrary and capricious grounds." Hadwen, Inc. v. Department of Taxes, supra, 139 Vt. at 42, 422 A.2d at 258. Any classification of taxation is permissible which "rationally furthers a legitimate state purpose." Zobel v. Williams, supra, 457 U.S. at 60; see

Hadwen v. Department of Taxes, supra, 139 Vt. at 42, 422 A.2d at 259. Since the purpose of the purchase and use tax is to pay for the maintenance and improvement of the state and interstate highway systems, 32 V.S.A. §8901, the tax bears an obviously reasonable relationship to the services provided, namely, the privilege of using those highways.

The Legislature has chosen to grant certain exemptions from the purchase and use tax, see 32 V.S.A. §8911(1)-(13); all non-exempt persons must pay the four percent tax. Among the legislative exemptions - and the only one pertinent hereto - is one for residents who pay a sales or use tax elsewhere on pleasure cars acquired outside Vermont, providing the state or province collecting the tax "would grant the same pro-rata credit for Vermont tax paid under similar circumstances." Id. §8911(9).

We note that the Vermont motor vehicle purchase and use tax does not apply to most nonresidents. Those nonresidents who come into the state to purchase a vehicle and then leave immediately to return to their home states do not have to pay a purchase or use tax to Vermont. See id. §8903(a) (purchase tax is payable "by a resident"). Those who must pay either a purchase tax or the compensating use tax include residents who purchase in Vermont, Id. §8903(a); residents who register cars purchased outside Vermont in a state or province that would no pro-rata credit for any Vermont purchase or use tax paid by one of its residents, id. §8903(b); persons such as plaintiff who move into Vermont and then register cars acquired before they became residents of the state, see id. §8903(a), (b); persons who accept employment or engage in a trade,

profession or occupation in Vermont for a period of at least six months and purchase a car here or operate one for more than 30 days, id. §§8902(2), 8903(a), (b), 23 V.S.A. §§4(30, 301; and any foreign partnership, firm, association or corporation doing business in the state and using vehicles in the state in connection with its business, 32 V.S.A. §§8902(2), 8903(a), (b), 23 V.S.A. §§4(30), 301.

Thus, Vermont's basic policy is clear: those who use the state's highways must contribute toward their maintenance and improvement. It is also the state's policy to encourage residents to support the local economy by refusing to grant credit for taxes paid to any non-reciprocating state or province. The only exemption under the state's policies is for residents who buy in reciprocal states and cannot avoid paying a sales or

use tax to such states. The exemption appears to be based upon a policy of encouraging out-of-staters from reciprocal states to purchase their vehicles in Vermont and pay a sales tax to Vermont, secure in the knowledge that they will not be subject to a duplicate tax in their home states, and upon a legislative assumption that few, if any, tax dollars will be lost through this exercise in comity. Whether the amount of highway tax raised in Vermont in this manner exceeds or falls below the amount lost to other states through the reciprocal arrangement does not appear of record; nevertheless, the exempt classification is based on a reasonable legislative policy or purpose, and, unless wholly arbitrary, must be upheld. Allied Stores of Ohio, Inc. v. Bowers, supra, 358 U.S. at 527; Hadwen, Inc. v. Department of Taxes, supra, 139 Vt. at 42, 422 A.2d at 259.

As mentioned, the exemption is not available to residents who acquire cars in states having no reciprocal agreement with Vermont; nor is the exemption available to new residents, such as plaintiff, who, subsequent to acquiring their vehicles, move to Vermont and seek to register them here. A change in the law so as to provide an exemption to either group would run counter to the state's present policies of requiring user contributions and encouraging purchases within the state, and would result in the loss of tax revenues to the state. With respect to new residents, such as plaintiff, who bring their cars with them, they are beyond the reach of any policy of encouragement to purchase in this state, and there is no reason to exempt them from making a fair contribution to the maintenance and improvement of Vermont's highways. Under the present statutory

scheme, plaintiff pays the same tax and is treated in exactly the same manner as all non-exempt persons, including the resident who purchases his vehicle in a nonreciprocal state.

It is also necessary to keep in mind that §8911(9) is an exemption from the payment of taxes, and exemptions are construed strictly,, with no claim of exemption to be allowed unless shown to be within the necessary scope of the statute. Rock of Ages Corp. v. Commissioner of Taxes, 134 Vt. 356, 359, 360 A.2d 63, 65 (1975). "A state, for many purposes, is to be reckoned as a self-contained unit, which may frame its own system of burdens and exemptions without heeding systems elsewhere." Henneford v. Silas Mason Co., supra, 300 U.S. at 587. The fact that plaintiff does not qualify as a member of the exempt class does not deprive him of the equal protection of the law.

Storaasli v. Minnesota, 283 U.S. 57, 62 (1931). "[T]he exemption is a proper and lawful one, and [plaintiff] cannot make out a discrimination against him from the mere fact that he is not in a position to claim it." Id.

We conclude that the exempt classification established by the Legislature is rationally related to a legitimate purpose of state government, namely, the promotion of commerce within the state and the raising of taxes to help maintain and improve the state and interstate highway system, and that the classification is not an arbitrary one. Accordingly, we find no violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

II.

The Proportional Contribution Clause of the Vermont Constitution has been

construed to be the practical equivalent of the Equal Protection Clause. Pabst v. Commissioner of Taxes, 136 Vt. 126, 131 n.2, 132-33, 388 A.2d 1181, 1184 (1978); In re Estate of Eddy, 135 Vt. 468, 472, 380 A.2d 530, 533-34 (1977). For the same reasons stated in Part I above, we conclude that there has been no violation of the Proportional Contribution Clause.

III.

Plaintiff also contends that 32 V.S.A. §8909 violates the Privileges and Immunities Clause of Article IV of the United States Constitution by failing to extend to new residents a credit for sales tax previously paid other States. Before this Court may apply the Clause to §8909, however, we must first decide "whether the [statute] burdens one of those privileges and immunities protected by the Clause." United Building and Construction Trades Council of Camden County and Vicinity v.

Mayor and Council of the City of Camden, 52 U.S. L. W. 4187, 4190 (U.S. February 21, 1984) (No. 81-2110) (citing Baldwin v. Montana Fish and Game Commission, 436 U.S. 371, 383 (1978)). "Only with respect to those 'privileges' and 'immunities' bearing upon the vitality of the Nation as a single entity must the State treat all citizens, resident and nonresident, alike." Baldwin v. Montana Fish and Game Commission, supra, 436 U.S. at 383. Thus the Privileges and Immunities Clause will not come into play unless a basic or fundamental right is involved.

Plaintiff argues that his right to travel is infringed by the requirement that he pay a use tax to register his vehicle, without being granted the same exemption or credit afforded to state residents. As we have previously noted, the right to travel, although a fundamental right, Shapiro v. Thompson,

supra, 394 U.S. at 630, is not involved herein. Accordingly, the Privileges and Immunities Clause of the United States Constitution does not come into play and there has been no violation of that constitutional clause.

IV.

Finally, plaintiff invokes the Commerce Clause in support of his cause, contending that Vermont's purchase and use tax discriminates against interstate commerce by failing to provide equal treatment for out-of-state purchases.

In order for the Commerce Clause to apply, the transaction at issue must be one that comes within the scope of interstate commerce. Because "interstate commerce" is a term of such wide implications and ramifications the courts have carefully avoided any attempt to give it a comprehensive definition. Gross

Income Tax Div. v. J. L. Cox & Son, 227 Ind. 468, 475, 86 N.E.2d 693, 696 (1949).

Generally speaking, the indispensable element in interstate commerce is the importation of people or goods, even one's own goods, into one state from another. Heart of Atlanta Motel, Inc. v. United States, 379 U.S. 241, 255-56 (1964); United States v. Hill, 248 U.S. 420, 423-24 (1919). Whether the movement is commercial in nature is immaterial. Heart of Atlanta Motel, Inc. v. United States, supra, 379 U.S. at 256. It has long been settled that when personal property has been brought into a state and come to a permanent rest, or merely halted for a moment before resuming its interstate journey, taxes upon the privilege of use, storage or consumption within the state do not impose an unconstitutional burden on interstate commerce. General Trading Co. v. State Tax Commission, 322 U.S. 335, 338

(1944); Henneford v. Silas Mason Co., supra, 300 U.S. at 582-83; Brown v. Houston, 114 U.S. 622, 633 (1885). In the words of Justice Cardozo, "A tax upon the privilege of use or storage when the chattel used or stored has ceased to be in transit is now an impost so common that its validity has been withdrawn from the arena of debate." Henneford v. Silas Mason Co., supra, 300 U.S. at 583.

There can be no doubt that at all relevant times herein plaintiff and his vehicle had ceased to be in transit. His intention was to move to Vermont, and at the time he sought to register the vehicle both he and the vehicle had come to rest in Vermont. Plaintiff's station wagon had become "part of the common mass of property within the state of destination," id. at 582, and was thus clearly an appropriate subject for the imposition of a non-discriminatory use tax in Vermont.

There has been no violation of the Commerce Clause.

Affirmed.

FOR THE COURT:

/s/ Ernest W. Gibson III
Associate Justice

IN THE SUPREME COURT
FOR THE
STATE OF VERMONT

NORMAN WILLIAMS and SUSAN LEVINE	)	Docket No. 83-139
v.	)	NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES
STATE OF VERMONT and WILLIAM H. CONWAY, JR., VERMONT COMMISSIONER OF MOTOR VEHICLES	)	

Norman Williams and Susan Levine, Plaintiff-Appellants in this action, hereby appeal to the Supreme Court of the United States from the final order of the Vermont Supreme Court, entered on June 15, 1984, affirming judgment for Defendants-Appellees. Plaintiff-Appellants' Motion for Reargument in this case was denied on July 9, 1984.

This appeal is taken under 28 U.S.C.

§1257(2).

Dated: Burlington, Vermont
July 25, 1984

THE APPELLANTS

By: /s/ Norman Williams
Norman Williams, Esq.
Gravel, Shea & Wright, Ltd.
Pro Se and Attorney for
Plaintiff-Appellant
Susan Levine
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PROOF OF SERVICE

I, Audrey R. Wells Mitchell, certify that on this 25th day of July, 1984, I served the foregoing Notice of Appeal on the Defendant-Appellee by depositing a true copy in the United States mails, with postage prepaid, addressed to:

Andrew M. Eschen, Esq.
Attorney General's Office
Pavilion Office Building
Montpelier, VT 05602

/s/ Audrey R. Wells Mitchell
Audrey R. Wells Mitchell

Subscribed and sworn to before me this

25th day of July, 1984.

/s/ Trudy A. Cyr
Notary Public, Chittenden County, Vermont
My Commission Expires: February 10, 1987

[PA132]

Filed July 26, 1984

Vermont Motor Vehicle

Purchase and Use Tax

§8901. Purpose

This is an act to impose a purchase and use tax on motor vehicles in addition to any other tax or registration fees. The purpose of this chapter is to thereby improve and maintain the state and interstate highway systems, to pay the principal and interest on bonds issued for the improvement and maintenance of those systems and to pay the cost of administering this chapter. The administration of this chapter is vested in the commissioner of motor vehicles and his authorized representatives. The commissioner may prescribe and publish regulations to carry into effect the provisions of this chapter, which regulations, when reasonably designed to carry out the

intent of this chapter, shall have the same force as if enacted herein.

* * * * *

§8902(2). Definitions

Unless otherwise expressly provided, the words and phrases used in this chapter shall be construed to mean:

. . .

(2) "Resident"--resident shall include all legal residents of this state and in addition thereto any person who accepts employment or engages in a trade, profession or occupation in this state for a period of at least six months. Also in addition thereto any foreign partnership, firm, association or corporation doing business in this state shall be deemed to be a resident as to all vehicles owned or leased and ordinarily used by it in connection with its place of business in

this state. Resident shall not include any person, firm or corporation not required to register motor vehicles by reason of any reciprocity provision with any other state.

* * * * *

§8903. Tax imposed

(a) There is hereby imposed upon the purchase in Vermont of a motor vehicle by a resident a tax at the time of such purchase, payable as hereinafter provided. The amount of the tax shall be four percent of the taxable cost of the motor vehicle or $600.00 for each motor vehicle, whichever is smaller, except that pleasure cars which are purchased for use in short-term rentals shall be subject to taxation under subsection (d) of this section.

(b) There is hereby imposed upon the use within this state a tax of four percent of the taxable cost of a motor vehicle, or $600.00 for each motor vehicle, whichever is smaller, by a person at the time of first registering or transferring a registration to such motor vehicle payable as hereinafter provided, except no use tax shall be payable hereunder if the tax imposed by subsection (a) above has been paid.

(c) The Vermont registration or transfer of Vermont registration of a motor vehicle shall be conclusive evidence that the purchase and use tax applies except as provided in section 8911 of this title.

(d) There is hereby imposed a use tax on the rental charge of each transaction, in which the renter takes

possession of the vehicle in this state, during the life of a pleasure car purchased for use in short-term rentals, which tax is to be collected by the rental company from the renter and remitted to the commissioner. The amount of the tax shall be five percent of the rental charge. Rental charge means the total rental charge for the use of the pleasure car, but does not includes a separately stated charge for insurance, or recovery of refueling costs, or other separately stated charges which are not for the use of the pleasure car. In the event of resale of the vehicle in this state for use other than short-term rental, such transaction shall be subject to the tax imposed by subsection (a) of this section.

(e) Any person registering a pleasure car in this state subject to the tax imposed by subsection (d) which is not

actually rented for not less than 30 days in any single year must pay the tax imposed by subsection (a) or (b) upon demand of the commissioner.

* * * * *

§8905(b). Collection of tax

. . .

(b) Every person subject to a use tax under subsection (b) of section 8903 of this title shall forward such tax form and the tax due to the commissioner with the registration application or transfer, as the case may be, and fee at the time of first registering or transferring a registration to such motor vehicle as a condition precedent to registration thereof.

* * * * *

§8907. Commissioner, computation of taxable costs

The commissioner may investigate the taxable cost of any motor vehicle transferred subject to the provisions of this chapter. If the motor vehicle is not acquired by purchase in Vermont or is received for an amount which does not represent actual value, or if no tax form is filed or it appears to the commissioner that a tax form contains fraudulent or incorrect information, he may, in his discretion, fix the value of said motor vehicle at the average book value of the same make, type, model and year of manufacture as designated by the manufacturer as shown in the Official Used Car Guide, National Automobile Dealers Association (New England edition) or any comparable publication, compute and assess the tax due thereon, and notify the purchaser thereof forthwith by certified

mail, and said purchaser shall remit the same within fifteen days thereafter.

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§8909. Enforcement

If the tax due under subsections (a) and (b) of section 8903 of this title is not paid as hereinbefore provided the commissioner shall suspend such purchaser's right to operate a motor vehicle within the state of Vermont until such tax is paid, and such tax may be recovered with costs in an action brought in the name of the state on this statute.

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§8911. Exceptions

The tax imposed by this chapter shall not apply to:

(1) motor vehicles owned or registered by any state or province or any political subdivision thereof;

(2) motor vehicles owned and operated by the United States of America;

(3) motor vehicles owned and registered by religious or charitable institutions or volunteer fire companies;

(4) motor vehicles owned and operated by a dealer and registered and operated under the provisions of sections 451-468 inclusive of Title 23;

(5) nonregistered motor vehicles other than tow or repairman vehicles;

(6) [Repealed.]

(7) motor vehicles, title to which on the effective date of this chapter is in the owner seeking registration thereof;

(8) motor vehicles transferred to the spouse, mother, father or child of the donor, or to a trust established for the benefit of any such persons or for the

benefit of the donor, or subsequently transferred among such persons provided such motor vehicle has been registered in this state in the name of the original donor;

(9) pleasure cars acquired outside the state by a resident of Vermont on which a state sales or use tax has been paid by the person applying for a registration in Vermont, providing that the state or province collecting such tax would grant the same pro-rata credit for Vermont tax paid under similar circumstances. If the tax paid in another state is less than the Vermont tax the tax due shall be the difference;

(10) motor vehicles registered in Vermont by the transferor and transferred between that individual or partnership and a business entity controlled by the transferor, if the transfer is exempt under section 351 of the United States

Internal Revenue Code in effect July 1, 1966;

(11) motor vehicles owned or purchased in another state by a member of the armed forces on full time active duty or his spouse upon which a purchase, use or sales tax has been paid in another state, except that, if that tax is less than the tax payable in this state but for this subdivision, the tax applies in the amount of the difference;

(12) motor vehicles owned and operated by physically handicapped persons for whom the vehicle's controls have been altered to enable such person to drive. This exception shall apply only when such handicapped person has been certified exempt from the tax by the commissioner of motor vehicles under the provisions of section 8901 of this title;

(13) motor vehicles obtained from the government as excess government property,

or vehicles purchased with 100 percent federal funds and used for federally supported local programs.

Burlington Free Press
Burlington, Vermont
Tuesday, June 19, 1984

Court Upholds Vehicle Use Tax

The Associated Press

Montpelier -- Vermont's motor vehicle use tax has been upheld by the state Supreme Court.

The tax was challenged by Leonard Leverson, who moved to Vermont from Wisconsin in 1982 and was required to pay a tax of $112 to register his car.

Leverson claimed the fee was unconstitutional because he had paid a sales tax to the state of Wisconsin when he bought the car.

Vermont imposes a tax of 4 percent, or $600, whichever is smaller, on the purchaser and use of motor vehicles in the

state. A person who moves to Vermont from another state is required to pay the tax when he registers his car in Vermont.

Leverson challenged that system, saying it violated the 14th Amendment because it did not give new residents credit for the sales tax they paid in their former state.

The Vermont Supreme Court ruled, however, that a person's right to register his car does not amount to a constitutional privilege.

Assistant Attorney General Andrew Eschen, assigned to the Vermont Transportation Agency, said roughly $1 million a year in revenue was at stake in the case.

[PA1312]